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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
LUIA C. ESPOSITO
:

Plaintiff,
:

-v-
:

THE STATE OF NEW YORK, et al.
:

Defendants.
:
----- X

07cv11612 (DLC)

MEMORANDUM OPINION
& ORDER

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DENISE COTE, District Judge:

This Opinion addresses the third Rule 60(b), Fed. R. Civ. P., motion to reopen this case filed by pro se plaintiff Luisa Esposito. Esposito brought this action pursuant to 42 U.S.C. § 1983 and state law against the State of New York, the City of New York, the Office of Court Administration of the Unified Court System of New York, various employees of these state institutions, and certain private practice attorneys. Esposito alleges that her former attorney sexually assaulted her, and that her complaints to various state agencies were ignored due to an alleged conspiracy to protect her assailant. She claims that the defendants violated her right to petition the government for redress of her grievances, and her rights to equal protection and due process under the First and Fourteenth Amendments of the United States Constitution.

On August 8, 2008, this case was dismissed along with five other related cases.¹ Esposito v. New York, No. 04cv6368 (SAS), 2008 WL 3523910, at *1 (S.D.N.Y. Aug. 8, 2008). Judge Scheindlin held that "the United States Constitution does not permit this Court to supervise the departmental disciplinary committees or review the decisions of courts of New York State" and dismissed all five cases on various jurisdictional grounds.² Id. Esposito appealed both that decision and the denial of her first Rule 60(b) motion to reopen, and both decisions were affirmed by the Second Circuit Court of Appeals. Esposito v. New York, 355 Fed. App'x 511 (2d Cir. 2009). Esposito again filed a motion to reopen on September 1, 2010, which was denied on October 25, 2010.

On March 21, 2016, Esposito filed a new Rule 60(b) motion to reopen this case based on "fraud on the Court" and "newly discovered evidence." The motion largely describes the unethical activities of certain defendants since 2010 and seeks to reopen the case on the basis of those activities. Defendant Harvey Gladstein & Partner LLC filed a response on April 6, and

¹ These five cases were filed as related to Anderson v. New York, No. 07cv9599 (S.D.N.Y. filed Oct. 26, 2007).

² Specifically, Judge Scheindlin dismissed the claims based on Eleventh Amendment state immunity, judicial and quasi-judicial immunity, and Rooker-Feldman doctrine grounds. Id. at *12-13. The court also held that there is no constitutional right to have the government investigate allegations of wrongdoing and that Esposito lacked standing. Id.

the motion became fully submitted that same day. This case was transferred to this Court on April 19.

Esposito seeks relief under Rules 60(b)(3) and 60(b)(6).

Under Rule 60(b), a court

may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Relief under Rule 60(b) is "generally not favored and is properly granted only upon a showing of exceptional circumstances." Ins. Co. of N. Am. v. Pub. Serv. Mut. Ins. Co., 609 F.3d 122, 131 (2d Cir. 2010) (citation omitted). Moreover, Rule 60(b)(6) relief "is only available if Rules 60(b)(1) through (5) do not apply." ISC Holding AG v. Nobel Biocare Finance AG, 688 F.3d 98, 109 (2d Cir. 2012).

"[A] Rule 60(b)(3) motion cannot be granted absent clear and convincing evidence of material misrepresentations and cannot serve as an attempt to relitigate the merits." Fleming v. N.Y. Univ., 865 F.2d 478, 484 (2d Cir. 1989). A Rule 60(b)(3) movant "must show that the conduct complained of prevented the moving party from fully and fairly presenting his case." State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada, 374 F.3d 158, 176 (2d Cir. 2004) (citation omitted).

While Esposito purports to seek relief under Rule 60(b)(3) for "fraud on the court" and Rule 60(b)(6) for other reasons that justify relief, the motion largely describes "newly discovered evidence." Accordingly, the motion is properly considered under Rule 60(b)(2). Under Rule 60(b)(2), a movant must meet an "onerous standard" by demonstrating that

(1) the newly discovered evidence was of facts that existed at the time of trial or other dispositive proceeding, (2) the movant must have been justifiably ignorant of them despite due diligence, (3) the evidence must be admissible and of such importance that it probably would have changed the outcome, and (4) the evidence must not be merely cumulative or impeaching.

United States v. Int'l Brotherhood of Teamsters, 247 F.3d 370, 391 (2d Cir. 2001) (citation omitted). Additionally, any motion made under Rule 60(b) must be brought within a "reasonable time," and motions under Rule 60(b)(1), (2), and (3) must be

brought no more than one year after the entry of the judgment.
Fed. R. Civ. P. 60(c).

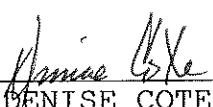
Esposito's motion is untimely. This case was closed in August 2008 and Esposito now seeks to reopen this matter over seven years later. Since this motion is based on "newly discovered evidence" and "fraud on the court" pursuant to Rules 60(b)(2) and (b)(3), Esposito is subject to the one year time limit of Rule 60(c). Even if Esposito's motion could be considered under Rule 60(b)(6), it has not been brought within a "reasonable time."

CONCLUSION

Esposito's March 21, 2016 motion to reopen is denied.

SO ORDERED:

Dated: New York, New York
May 12, 2016



DENISE COTE
United States District Judge

COPIES SENT TO:

Luisa Castagna Esposito
571 Roy Street
West Hempstead, NY 11552